Me Argnes Before the Appellate Division of the Sapreme Court that It Is in Contravention of Constitutional Inhibitions, Being a Special Law, Providing for Lending the City's Money in Aid of an Individual and for an Increase of the City's Debt Beyond the Constitutional Limit - A. Populist . Socialist Device,

The Appellate Division of the Supreme Court devoted yesterday afternoon to the consideration of the legal problems involved in the creation and work of the Rapal Transit Commission in this city. The Commission recently, after an extended hearing, made a report of its findings to the court. The matter was brought into court yesterday on an appeal from the declaion of Justice Trunx at Special Term, in the taxpayers suit instituted by The Sux Printing and Publishing Association, Franklin Bartlett as trustee under the will of Henry Mason, and Mason Carnes against the Board of Rapid Transit Commissioners and the Mayor, Aidermen, and Commonalty of the city of New York.

The appellants claim that the act of the Legislature under which the Rapid Transit Commission was appointed was unconstitutional and is against the public weal.

The court heard argument at the same time yesterday on a motion to confirm the report of Commissioners Coudert, Geishenen, and Sher. Constitutional objections which had been made at the time of the appointment of these Commissioners were by order of the court expressly reserved for argument until the coming n of the report of the Commissioners, and the same constitutional objections were involved in the taxpayers' suit and in the objections interposed by them to the confirmation of the Commissioners' report.

On the bench yesterday were Justice Van Brunt, presiding, and Justices Barrett, Rumsey, Williams, and Ingraham. Congressman Franklin Bartlett appeared as counsel for THE SUN Printing and Publishing Association and others; Ellbu Root and George G. De Witt as counse for Robert Goelet, the Chemical National Bank, and others: George Zabriskie and Archibald Murray for Henry Hilton and others: Theodore Connolly for the Corporation Counsel; Ezra A. Tuttle, James C. Bushby, and John E. Roosevelt for the Park Avenue Association, and Albert B. Boardman and Edward M. Shepard for the Rapid Transit Commissioners.

Congressman Bartlett said: "Before proceed-

ing to discuss the constitutional questions involved I call the attention of the court to the general proof that constitutional safeguards should be upheld. It has become the habit of certain courts to belittle and impair the importance of those safeguards which were designed to secure to the citizen his property rights. The grand, broad question to be deby this court, as I concede it to be, is: Shall the Constitution of the State of New York

The Constitution is supreme. It is the or ganic law, the underlying frame of government, and it is therefore superior to any legislative enactment. The Constitution is made for all time, or at least for a long series of years, and it cannot be readily repealed or set aside; it cannot be readily changed or altered, as can an ordincry legislative enactment. This is shown by the provisions contained in Article XIV. of the new Constitution of this State in reference to amendments to the Constitution and in reference to the revision of the Constitution.

"By section I any amendment to the Constitution must be agreed to by a majority of the mem bers of each of the two Houses, the Senate and Assembly, and must be agreed to a second time by a subsequent Legislature, and finally be approved by a majority of the electors of the State voting thereon. By section 2 the question 'Shall there be

Convention to revise the Constitution and amend the same?' shall be submitted to the electors of the State in 1916 and every twentieth year thereafter, and if a majority of the Stotors voting thereon decide in favor of a Convention, one shall be held. Any proposed constitution or constitutional amendment must receive the assent of a majority of all the delecates elected, and must, subsequently, be submitted to a vote of the electors of the State.

"These provisions, which make it so difficult to amend the Constitution, demons trate its settled and permanent character in comparison with ordinary statute law. And if the Constitution is so fundamental and steadfast that it cannot be changed except after great deliberaple at large, or by their representatives, it must be of vital importance that its provisions should be duly observed and that the Constitu-

Your Honors are very familiar with the general rule that whenever a legislative enactment contravenes the Constitution must control; and so I do not deem it necessary to cite many cases upon that point. I have referred to but three cases: one, the famous old case of Marbury agt. Madison, where Chief Justice Marshall said that if the courts are to regard the Constitution, and the Constitution is superior to any ordinary act of the Legislature, the Constitution and not

Madison, where Chief Justice Marshail said that If the courts are to regard the Constitution, and the Constitution is superior to any ordinary act of the Legislature, the Constitution and not such ordinary act must govern the case to which they both apply, and I also cite the opinion of the Supreme Court of the United States, rendered by Justice Field, in Norton agt. Shelby County, where he said: 'An unconstitutional net is not a law, it confers no rights, it imposes no office. It is, in legal contemplation, as inoperative as though it had never been passed.'

"A year or two later, in a case reported in 120th United States, the same great Judge used identical language in part, saying: 'An unconstitutional act is not a law; it binds no one and protects no one.'

"This case, it must be assumed, is largely dependent upon the great constitutional question involved because the evidence taken before the Commissioners was conflicting, and were it not for the violation of the Constitution it might well be that this court would he-state to set aside the report of the Commissioners in favor of the enterprise. Commissioners in favor of the enterprise. Commissioners in favor of the East River Bridge Company, reported in 75 Hun. And for that reason the Commissioners in proceedings of this hadre have always resolved questions in regard to which there may be any possible doubt in favor of the applicant, in order that it may be faulty determined by the contrast to whether their conclusions should be continued or not.

"There are many reasons why this permicious and wantonly extravacant scheme should, if possible, be deteated. This whole legislature is fraught with danger to the Commonwealth; with grave danger, because of the usurnation by the central Legislature of the East flive in a standpoint the scheme is dangerous, because it is instance attempted in this State of the Scheme should favor in the land before. It is the strate the legislature and sommissioner in the land before. It is the strate the legislature and sommissio

and all industries requiring municipal francisiess.

"It is extraordinary that in a great conservative business community, such as that of the city of New York, with all its financial and commercial enterprises, such a socialistic scheme should ever have gained a footing. Its thase people believe that while the State ownership of railroads is wrong in principle if amplied to the State Government or the Federal Government it is good enough for the people of the State of New York? The Government that is good enough for the people of the State of New York? The Government on the most striking instances of paternalism, and it is one which has often been found in its practical operation to bring around a disaster to the Government investing

THE RAPID TRANSIT LAW. the public moneys in railroads. And as your Honors have absolutely unlimited power to de-termine in this case whether the railroad should be constructed or not, you have the right to onsider whether the proposed municipal con-difficulties of a railroad is good for the community

struction of arisinosits good for the community or not.

"An active illustration of the danger of trovernment construction and operation of railroads is fornished by the recent experience of the British colony of Australia. The facts were brought out to a great libel suit when not long since was tried in that colony, a case which lasted for 180 days, and in which the fury's fees slowe were \$25,000. The cellur of the Melbourne Age was sued by the Chief of Railroads, and the jury rendered a verdict in all points in favor of the newspaper. The Injury to the country caused by the Government ownership of the railroads was well portrayed by the editor's leading counsel, the Hon, A. L. Purves. He said: "The history of the administration of this country was associated up to a certain time with prudence, foresight, and circumspection. But there came a mad era of railroad building, public expenditures, and speculations that was almost unparalished. Parlament was disorganized. The constituencies were demoralized and corripted by enormous railroad expenditures. Each man in the constituencies, speaking generally, was urging upon his representative in Parlament to obtain some advantage from the general to obtain some advantage from the general community in favor of some particular district or individual. The public service was demoralized and Parliament, spurred on by the electorates and by the log roiling of the members, opposed no check on borrowing and spending and hastening to habituping.

The State ownership of railroads has never found favor in the contry, and so the ownership of a railroad by a city would be objectionable under our form of government. As Judge Andrews said in the matter of the Niagara Falis and Whirinoot Railroad Company, 108 New York: It would be impracticable and contrary to our mages for the State to entire upon the general business of constructing and operating railroads as mable ways for the transportation of freight and passengers, and as incident thereto the right to take private property under An active illustration of the danger of Gov-

"The framers of these rapid transit acts seem to have become even more societious in 1895 for the benefit of the future contractor, and we find certain significant changes made in section 34 by the act of 1865. The permission given to the Board in the act of 1894 to contract for the construction of the whole road or all the roads in a long for the construction at 1894 to contract for the construction at 1875 of two or more tracts over a part of the road or roads, and afterward of one or more additional tracts over a part of part of the road or roads, and afterward of one or more additional tracts over a part or part of the road or roads, and afterward of one or more additional tracts over a part or part of the soil to contract for the construction at 1875 of two or more tracts over a part of the soil or more additional tracts over a part of such road or roads. Then follows a new provision giving the contractor a vive and the soil of the contract of the soil owing extraordinary provision which makes the city and insurer or guarantor for the contract and insurer or guarantor for the contract of the soil owing extraordinary provision which makes the city and insurer or guarantor for the contract of the soil city that the contract of the soil city that the contract of the soil city that the read of the soil of the total contract shall further provide by proper stipulations and coordants on the part of the soil city that the tractor, so long as the contractor shall perform the stipulations of the contract the right to construct and operate the road as prescribed in the contract, free of all right, claim, or other interference, whether by injunction, suit for damages or otherwise on the part of any owner, abouting owner or other person.

Soil of the contractor shall pay a further sum equal to a contractor shall pay a further sum equal to a contractor shall pay a further sum equal to a contractor of the contractor. The promoters of the sentence of the contractor, the promoters of the sentence of the contractor. The pr

rapid transit railways were to be constructed, maintained, and operated by the city alone it would not be a municipal or city purpose. But without deeming it necessary to decide that question, it is clear that when a railway is to be run in partnership with a contractor for his benefit, as here, it certainly is not a city purpose.

The Brooklyn Bridge act or May 14, 1875, provided that the bridge was to be a millie work. The bridge company was dissolved, the private interests were terminated; while here by this rapid transit scheme the private interests of the contractor or grantee are kept allive, and open his failure the city must account and pay over to him. As the Court of Appeals said, it was not the purpose or effect of the act to make the city of New York a stockholder in the bridge company or to cause it to loan any money

250,000 or more, the second class all cities having a population of 50,000 and ess than 250,000, and the third class all other cities, and provides, further, that 'have relating to the property, affairs of government of cities, and the several departments thereof, are divided into general and special city laws general city laws are those which relate to all the cities of one or mere classes; special city laws are those which relate to a single city or to less than all the cities of a class. Examine this section and it becomes clear that the Rapid Transit act of 1895 is a local bill or act. It is clearly a special city law, as it relates to less than all the cities of the largest class, those containing 250,000 inhabitants, and a special city law is a local act, and the Rapid Transit act was, therefore, passed in volution of the inhibition of the Constitution contained in the cities of the third article.

"The people of this State in their highest representative form, their Constitutional Convention, have decided that any law which relates either to a single city or to less than all the cities of a class is a special city law. The first class includes all cities having a population of two hundred and fifty thousand or more, so that any act referring or relating to 'cities having over one million of finabitants, even if there were several cities of that population, would be a special city law. And this coasitutional construction by the Constitutional Convention of 1894 is binding and controlling net only over acts subsequently passed, but as to every city law now upon the statute books, whether it were passed in 1894 or 1895.

"For the position I now take I have high Judicial authority. The Subreme Court of the State of Ohio in two cases has held that acts such as these Hapid Transit acts are local or special acts in the case of the State on the relation of the Attornex-tieneral against Anderson in January, 1896. The same contention has further been austained by the Supreme Court of the State of New York, is not

the people or appointed as the Legislature may direct.

"The first section of the principal Rapid Transit act of 1864 chapter 75% reads: In each city having over one million of inhabitants, according to the last preceding national or State census, there shall be a Board of Rapid Transit Railroad Commissioners in and for such city, which shall consist of the Mayor of such city, the Comptroller or other chief financial officer of such city, the President of the Chamber of Commerce of the State of New York by virtue of his office, and the following named persons, to wit. William Steinway, Seth Low, John Challin, Alexander E. Orr, and John H. Starm.

"The provision that the President of the Chamber of Commerce of the State of New York, by virtue of the State of New York, by virtue at his office, shall be a Rapid Transit. Rairroad Commissioner makes the choice of the individual selection and dependent upon the votes of the people, but dependent

"Again the provision for the filling of vacan-"Again the provision for the filling of vacancies in the offices created by the Hapid Transit
act of 1844, chapter 752, is unconstitutional
and void because at violates section 5 of Article
X of the then tonstitution of the State of New
York, in that it provides for the filling of offices
nather by an election by the people nor by an
appointment. The act of 1894 provides that
vacances which may take place in the offices so
held by the persons specifically named as Commissioners shall be filled by a majority void
of the remaining memisters of said Board.
The word 'voic is used in relation to
an election of new Commissioners of Rapid
Transit by the remaining Commissioners of
Rapid Transit and it would do violence to langingle to hold that, where the words 'majority
vote' are used, the choice of the persons to fill
the vacancies is not an election but an appointthe vacancies is not an election but an ampointment. An appointment is made either by the executive or by some one executive or by some one executive and executive functions, and when a selection is made by means of votes or ballots the proceeding is an election and not an appointment.

The next point to which I call the attention of the Court is that the principal rapid transit sets are unconstitutional and void because they fall to provide just compensation for the land taken. The provisions for the acquisition of

The people.

"I claim that it is beyond the power of the Legislature to delegate a certain question to the people and to make the vote of the electors on that question their determination in favor of an entirely different plan.

"The next point is that the act of 1854 is unconstitutional and void, because it violates the provisions of section 2, Article N., of the Constitution of 1846 in two respects: First, it usurps the right of local self-government; and second, the Legislature, instead of directing the mode of appointment of the Rapid Traisst Railroad commissioners, appoints them directly. We find in Article N. of the Constitution of 1846 the strict rule of local control of local offices running through the whole section. It was intended that severy officer should be elected by the electors of the county, city, town, or village, or that he should be appointed by the authorities of the county, city, town, or village. The right of local self-government is a vital privilege of every free city, and it has been onloyed herestofore more than a century, it was granted to us by a British colonial Governor long prior to the American Revolution. Shall it now be taken from us in the last days of the nineteenth century by the action of an ignorant Legislature?

"Part of the legislative and financial power of the corporation of the city of New York which was vested in such corporation by the act of

in how be taken from us in the section of an ignorant legislature?

"Part of the legislative and financial power of the corporation of the city of New York which was vested in such corporation by the act of 1830, and which was subsequently recognized by the Consolidation act of 1832, has been unconstitutionally transferred by the Rapid Transit acts to the Board of Rapid Transit Railroad Commissioners. A great authority on this branch of the case is the decision of the Court of Appeals in the case of the People exterior and the case of the People exterior and the Court of Appeals. The purpose and object of section of Appeals, the opinion of the Court of Appeals. The purpose and object of section of Article X of the Constitution, has been supported divid and political divisions of the State the right of foral self-government by requiring that all county, ety, town, and village officers whose election or appointment was not provided for by the Constitution, save those whose offices might thereafter be created by law, should be elected by the electors of the respective numericalities at appointment was not been appointed by self-authorities thereof as the legislature should designate. As to office known and in existence at the time of the adoption of the Constitution this provision is also use in its prohibition of an appointment by the contral Government of the adoption of the Constitution this provision is also used to be a self-adoption of the Constitution this provision is also used to be a self-adoption of the constitution this provision is also used to be a self-adoption of the Constitution this provision is also used to be a self-adoption of the constitution of the appointment of the thing of the adoption of the constitution of the self-adoption of the respective of the rights and fancholess thus gamanteced



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MURDER CAUSED BY RELIGIOUS MANIA IN IRELAND.

One of the Strangest Crimes in History-The Murderers Stordy, but Half-savage Dwellers in a Family Hamlet, and Ruled After the Ancient Patriarchal l'ashion, In the Irish papers received in yesterday's mail are accounts of one of the most remark-

able crimes that has ever come to light. It is the killing of James Cunningham at Lisphelan, county Roseommon, Ireland, about thee weeks ago. Lisphelan is a family hamlet of seven houses in which the Cunninghams, to the number of about thirty-five, live, preserving a latter day style of patriarchal government The head of the family is Patrick Cunningham, a widower, and it was his eldest sen who was murdered, all the rest of the family being implicated in the killing. His death was the result of a strange mania which took the form of superstitious hysteria. All the Cunningham family are of gigantic

height and strength. No puny or undersized child has ever survived its infancy in Lisphelian and gossip of the county has it that the old Spartan law in this matter is followed by the Cunninghams. The seven families, each of which has its own house, have intermerried to an extent that has involved relationships to a an extent that has involved relationships to a hopeless tangle. Farming is the occupation of all except James, the dead man, who was a cot-bler. They are wofully ignorant, speaking a dialect so debased that even the near by peasantry, whose own language has to an extent been infected by the bastard tongue of their neighbors, have difficulty often in understand ing it. Instead of being voluble and light hearted, like most of the county Roscommon peasants, the Cunninghams are silent, stern, and merose. They are also deeply religious. Their great physical strength makes them feared, and because of the jealousy with which they guard their family life from intrusions they have fallen under the ban of suspicion among their neighbors, in Lescarron, the nearest town, which is twelve miles away, it is openly said that the "black Cunninghams" who are not black, but fair, for the most part

maintain unholy alliance with evil spirits. It appears that the dead man was the ar-About three weeks ago he developed strange habits of walking back and forth in the fields talking to himself and gesticulating. Whatever the ailment was, it was transmitted, by nervous contagion undoubtedly, to the other members of the household, Patrick, Jr., John, and Michael, his brothers, and his sister Bridget. They twitched and jerked like persons affected with St. Vitus's dance. William Cunningham, who lived in the next house, advised sending for a doctor, but the patriarch said: "It is the bad spirit upon him. Send for the

"It is the bad spirit upon him. Send for the priest."

So William sent for both priest and doctor. With the physician James would have nothing to do, but the priest succeeded in calming him. Before leaving he exhorted the family not to give way to foolish superstitions, but to attend to their devotions regularly, and above all to note carefully any increase of the affection in James, and let him know of it immediately. As matters turned out there was no opportunity to let him know until it was too late. His visit was on Tuesday, March 7. In a few days thereafter James seemed to be better. He still walked much asione, but was rational in conversation and did not gestleuiate and talk to himself so much. On Friday he went into his cobbler's show to work as usual. At the call of his father he came in with the rest for the evening prayer, and, kneeling down near the big firepiace, began to tell his beads. Suddenly he threw his rosary into the flre, sprang at the threat of his father, throwing him to the throat of his father, throwing him to the floor, and began to throttle him.

The whole family came to the patrarch's escue, dragged the maddened son away, and thrust him into an adjoining bedroom. What happened then will probably never be known, as the Cunninghams are evidently keeping some details back, but there is ground for the family, acting perhaps under the same mania that prompted James's act, determined to kill him as a devil. This much is known, that he was slain with the instruments brought from his cobbler's shop at the other end of the house. All the evidences show that it was a terrible light. The deal man was inrecognizable when found, so terribly battered was his face. His neck was slashed in a dozen places, and any one of the many stab wounds in his breast would have been sufficient to produce death. Even his hands were stabled through. Nor did his slavers escape. Every one of the family, when arraigned for trial, showed some mark of the battle a knife wound, a bruised face, or the mark of teeth. thrust him into an adjoining bedroom. What nark of teeth.

No sound of the battle was beard in William.

the modes now made for the confination of the papers declined. The commissioners respect, as did Mr. 18 with Mr. Rossevelt, and Mr. 2-dereske, Messach and the sum of the battle was beard in William Commissioners with make the sum of the battle was beard in William Commissioners with make the sum of the battle was beard in William Commissioners with make the sum of the battle was beard in William Commissioners with make all the Liambellu people fewer of the make all the subject of the commissioners, will make all the Liambellu people fewer of the make all the support of the consolidation of the Blazzes in the support of the make all the Liambellu people fewer of

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